

Form 140

(Revised 1/1/11)

Case No. 18669

FORM 140 - PARTY STATUS REQUEST

Before completing this form, please review the instructions on the reverse side.

PLEASE NOTE: YOU ARE NOT REQUIRED TO COMPLETE THIS FORM IF YOU SIMPLY WISH TO TESTIFY AT THE HEARING. COMPLETE THIS FORM ONLY IF YOU WISH TO BE A PARTY IN THIS CASE.

(Please see reverse side for more information about this distinction.)

NAME: Last

First

Middle I.

Hernandez (Alan) and Rodriguez (Mary) (husband and wife) Alan and Mary

ADDRESS: Street

Apt. # (if any)

City

State

Zip Code

4823 Reservoir Rd., N.W.

Washington

DC

20007

Phone No.

Fax No.

E-Mail

202-841-5037 and 703-216-4068

anernandez@wileyrein.com; mdrod1962@yahoo.com

I hereby request to appear and participate as a party.

Signature

Date

Nov. 26, 2013

Will you appear as a(n)

☐

Proponent

☒

Opponent

Will you appear through legal counsel?

☐

Yes

☒

No

If yes, please enter the name and address of such legal counsel.

NAME: Last

First

Middle I.

We reserve the right to appear through legal counsel

BOARD OF ZONING ADJUSTMENT

ADDRESS: Street

Apt. # (if any)

City

State

Zip Code

District of Columbia

DC

20007

Phone No.

Fax No.

E-Mail

CASE NO. 18669

EXHIBIT NO. 28

WITNESS INFORMATION:

On a separate piece of paper, please provide the following witness information:

1. A list of witnesses who will testify on the person's behalf;
2. A summary of the testimony of each witness (Zoning Commission only);
3. An indication of which witnesses will be offered as expert witnesses, the areas of expertise in which any experts will be offered, and the resumes or qualifications of the proposed experts (Zoning Commission only); and
4. The total amount of time being requested to present your case (Zoning Commission only).

PARTY STATUS CRITERIA:

On a separate piece of paper, please answer all of the following questions referencing why the above entity should be granted party status:

1. How will the property owned or occupied by such person, or in which the person has an interest be affected by the action requested of the Commission/Board?
2. What legal interest does the person have in the property? (i.e. owner, tenant, trustee, or mortgagee)
3. What is the distance between the person's property and the property that is the subject of the appeal or application before the Commission/Board? (Preferably no farther than 200ft.)
4. What are the environmental, economic or social impacts that are likely to affect the person and/or the person's property if the action requested of the Commission/Board is approved or denied?
5. Describe any other relevant matters that demonstrate how the person will likely be affected or aggrieved if the action requested of the Commission/Board is approved or denied.
6. Explain how the person's interest will be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than that of other persons in the general public.

Except for the applicant, appellant or the ANC, to participate as a party in a proceeding before the Commission/Board, any affected person shall file with the Zoning Commission or Board of Zoning Adjustment, this Form 140 not less than fourteen (14) days prior to the date set for the hearing.

Board of Zoning Adjustment
District of Columbia
CASE NO. 18669
EXHIBIT NO. 28

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List of Witnesses

- 1 Alan N Hernandez and Mary D Rodriguez, owners and occupants of 4823 Reservoir Road, NW, Washington, D C 20007
- 2 Gene Ulm and Carolyn Machado, owners and occupants of 4843 Reservoir Road, NW, Washington, D C 20007
- 3 Mark Linscott and Karen Linscott, owners and occupants of 4831 Reservoir Road, NW, Washington, D C 20007
- 4 Cheryl Brown, owner and occupant of 4827 Reservoir Road, NW, Washington, D C 20007
- 5 Andrew Winn, tenant of 4821 Reservoir Road, NW, Washington, D C 20007

Party Status Criteria

1 How will the property owned or occupied by such person, or in which the person has an interest, be affected by the action requested of the Commission/Board?

A dog kennel at the proposed location at 4824 MacArthur Blvd , NW will (i) cause excessive noise during the day and at night that can be heard from our residential property, (ii) create unsanitary conditions due to excessive dog waste and odors in areas adjacent to our property, (iii) negatively impact the quiet and peaceful enjoyment of our home and adjacent areas, and (iv) decrease the value of our property by making it a less desirable place to live. The adverse impact to our home of a dog kennel at the proposed location is exacerbated by the fact that no agency in the District of Columbia regulates or conducts inspections of dog kennels not associated with a veterinary clinic or hospital or otherwise sets any parameters on the number of dogs that can be kept in a kennel, the conditions in which the dogs will be kept, or waste disposal and odors from a kennel that will directly affect our property.

2 What legal interest does the person have in the property?

We are the owners of, and together with our two school-aged children, occupy the residential property at 4823 Reservoir Road, NW, Washington, D C 20007

3 What is the distance between the person's property and the property that is the subject of the appeal or application before the Commission/Board?

The proposed dog kennel is located approximately 16 feet from our property and is, in fact, directly behind our property. The back door in our rear fence, which is used to access our property from the rear, is only a few steps away from the rear of the proposed dog kennel.

4 What are the environmental, economic or social impacts that are likely to affect the person and/or the person's property if the action requested of the Commission/Board is approved or denied?

a Negative Environmental Impact on our Property

- 1 Excessive Noise** The proposed dog kennel will create excessive noise during all hours of the day and night that we will be able to hear from our kitchen, living areas and bedrooms. It is anticipated that the dogs left for an extended period of time or overnight in the proposed kennel will bark and howl as dogs tend to do, especially during the night and early morning hours. The level of barking and howling could be substantial if the dogs miss their owners and homes. The volume of noise will be exacerbated by the number of dogs that are kept together in the small townhouse proposed to be used for the kennel, which is likely to be large. The owners of Diva Dogs have stated in a recent Advisory Neighborhood Commission 3D meeting that they intend to board as many dogs as possible in addition to keeping their own four dogs on the premises. Furthermore, it is expected that the dogs, strangers to each other and kept together in a small setting, will enter into fights, raising even

more noise, particularly since the dogs will not be placed in cages and will instead be left free to roam, as the Diva Dogs' owners have testified that they intend to do. Moreover, Diva Dogs has not done any sound proofing to the townhouse proposed to be used for the kennel, as required by 11 DCMR § 735.3, and the townhouse appears to have the original windows which are probably more than 80 years old. To make matters worse, the windows are occasionally left open perhaps to ventilate the building from the noxious odors caused by the dogs. As the Board has found in another case, dog boarding facilities are characterized by greater amounts of noise and greater numbers of overnight and outdoor stays compared to veterinary hospitals and pet shops. See BZA Appeal No. 17092 at pp. 4-5.

- 11 **Excessive Dog Waste and Odors** Diva Dogs' employees regularly walk and exercise dogs currently in their care in the 4800 block of Reservoir Road, NW, a residential zone that abuts the 4800 block of MacArthur Blvd , NW. They also walk the dogs in a small neighboring park at the corner of MacArthur Blvd and Reservoir Rd. Diva Dogs' employees currently allow the dogs to urinate and defecate on the grassy areas and gardens in front of our homes and in the park. This situation will worsen with the introduction of a kennel as proposed. Our family and other residents of the 4800 block of Reservoir Road must walk on the grassy areas to get to our homes from the parking spaces in front of our homes. Even if the employees attempt to collect the waste left by the dogs, it is likely that they will not collect 100% of the solid waste and, in any event, will not be able to collect urine. This condition is unsanitary and hazardous to health and to the environment. We, our children and our neighbors can easily walk on any waste that is not entirely collected and suffer undesirable consequences, including tracking the waste into our home and our neighbors' homes. In addition, uncollected dog waste attracts rats and the runoff of uncollected waste can harm water supplies and the environment. See "Dog waste is more than a pet peeve", Herald-Tribune (article published October 29, 2011; found at <http://www.heraldtribune.com/article/20111029/COLUMNIST/111029516>) (noting health hazards to humans from uncollected animal waste), "Pet Waste Management", U.S. Environmental Protection Agency (fact sheet published by EPA, found at <http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm?action=browse&Rbutton=detail&bmp=4>) Moreover, because no D.C. government agency is charged with inspecting private kennels, there will be no way to know whether Diva Dogs is disposing of dog waste in a safe and sanitary manner on its premises. Similarly, due to the lack of inspections, there is no way to enforce that Diva Dogs has a working and adequate air filtration system in place.

b. Negative Economic Impact on our Property and Neighborhood

- 1 **Clean up and damage to gardens, grassy areas, and common areas** The introduction of a potentially large number of dogs from a dog kennel adjacent to our residential neighborhood will leave dog waste and urine in the grassy areas and gardens in front of our home and those of our neighbors, damaging the vegetation in these areas. This will require constant clean up and remediation of the damaged areas and possible replacement of the vegetation from time to time, resulting in additional costs to us and other residents of the 4800 block of Reservoir Road.

- 11 **Decrease in property values** Under the District of Columbia Zoning Regulations, kennels are not permitted in or adjacent to residential zones because they negatively impact the peaceful and quiet enjoyment of residents and create hazardous conditions. Having a kennel 16 feet from our residence, essentially in our backyard, will make our property less desirable and less attractive to subsequent purchasers and potential tenants. We recently purchased our home and invested in renovations to it. A kennel in our backyard will detract from our home's value.

c Negative Social Impact on our Property

A kennel directly behind our home will negatively affect the peaceful and quiet enjoyment of our home. The extremely close proximity of our home to a kennel will have a stigmatizing effect on our property. No one reacts positively to conducting daily life in close proximity of a commercial kennel. The enjoyment of our backyard and deck will be negatively affected by having a kennel 16 feet away. Social gatherings at our home and our backyard will be less desirable and enjoyable due to the kennel and its effects on adjacent areas. A kennel located 16 feet from our home and the attendant dog noise and traffic in our neighborhood and gardens will make strolling down the block less enjoyable when we must constantly look out for uncollected dog waste created by the potentially large number of dogs that are proposed to be kept at the Diva Dogs kennel.

5 **Describe any other relevant matters that demonstrate how the person will likely be affected or aggrieved if the action requested of the Commission/Board is approved or denied.**

a Diva Dogs Kennel is Currently in Operation

Diva Dogs has been operating a kennel that is boarding dogs on the premises at 4824 MacArthur Blvd NW, overnight for a fee, in violation of the District of Columbia's zoning regulations. Diva Dogs advertises dog boarding services with a large sign in front of the shop and on its web site. Diva Dogs' owners currently board dogs on the second floor and other locations of the premises despite the lack of an approved special exception to operate an animal boarding business. The owners' disregard for the zoning regulations casts doubt on their commitment to comply with any conditions the Board may impose upon the operation of their business. Their disregard of the law will also likely restrict our ability to have them address any hazardous situations created by the proposed kennel impacting our home.

b Commercial Dog Kennels are not Regulated or Inspected by the District of Columbia Government

The District of Columbia does not subject dog boarding facilities to any regulatory or licensing program that impose sanitary or other operational standards. See BZA Appeal No. 17092 at p. 5. Therefore, the hazardous risks of a commercial kennel business operating in such close proximity to occupied residences in a residential zone are very high. In addition to zoning violations, there are also potential consumer and public health issues at stake. We nor our fellow residents of the 4800 block of Reservoir Road do not want to be charged with

having to police Diva Dogs' compliance with any conditions the Board may consider imposing upon the proposed kennel business

6 Explain how the person's interest will be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than that of other persons in the general public.

All of the residents of the 4800 block of Reservoir Road, NW, all of whom are within 200 feet of the proposed kennel, will be negatively affected by the proposed kennel for the reasons referred to above. A total of 13 homes are within the affected area. However, our home which is located in Lot no 0034, Square no 1388 is directly behind the building proposed for the kennel which is on Lot no 0025, Square 13888. The effects of excessive noise or noxious odors from the proposed kennel will be directly felt on our property.